

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|----------------------------------|---|------------|
| PROPOSED ADJUSTMENT OF THE |) | CASE NO. |
| WHOLESALE WATER SERVICE RATES OF |) | 2009-00465 |
| THE CITY OF WHITESBURG |) | |

O R D E R

The City of Whitesburg ("Whitesburg"), a city of the fourth class,¹ owns and operates a water treatment and distribution system that provides, *inter alia*, wholesale water service to Letcher County Water and Sewer District ("Letcher District").

Letcher District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that are used in the distribution of water to the public, for compensation, to approximately 951 customers in Letcher County, Kentucky.² It is a utility subject to Commission jurisdiction.³

KRS 278.010(3) generally exempts municipal utilities from Commission regulation by excluding cities from the definition of "utility."⁴ In *Simpson County Water*

¹ KRS 81.010(4).

² Annual Report of Letcher County Water and Sewer District to the Public Service Commission of the Commonwealth of Kentucky for the Calendar Year Ended December 31, 2007 at 5, 27.

³ KRS 278.010(3)(d); KRS 278.015.

⁴ See *McClellan v. Louisville Water Company*, 351 S.W.2d 197 (Ky. 1961).

District v. City of Franklin, 872 S.W.2d 460 (Ky. 1994), however, the Kentucky Supreme Court held that this exemption did not extend to contracts for utility service between a municipal utility and a public utility. The Court ruled that “where contracts have been executed between a utility and a city . . . KRS 278.200 is applicable and requires that by so contracting the City relinquishes the exemption and is rendered subject to . . . [Commission] rates and service regulation.”⁵

Simpson County Water District effectively subjects all contracts between municipal utilities and public utilities to the Commission’s jurisdiction, requires all municipal utility transactions with a public utility to comply with the provisions of KRS Chapter 278, and makes Commission approval a prerequisite to any change in a rate that a municipal utility assesses a public utility for wholesale utility service.

Pursuant to the *Simpson County Water District* decision, the Commission, in Administrative Case No. 351, directed that all municipal utilities that provide wholesale utility service to a public utility “file with the Commission a copy of their contracts with the public utility and a schedule of their rates for wholesale service.”⁶ We further directed that “[a]ny municipal utility wishing to change or revise a contract or rate for wholesale utility service to a public utility shall, no later than 30 days prior to the effective date of the revision, file with the Commission the revised contract and rate

⁵ 872 S.W.2d at 463.

⁶ Administrative Case No. 351, Submission of Contracts and Rates of Municipal Utilities Providing Wholesale Service to Public Utilities (Ky. PSC Aug. 10, 1994) at 1-2.

schedule.”⁷ KRS 278.160(1) and (2) and KRS 278.180(1) supported and required this directive.

KRS 278.160 provides:

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

KRS 278.180(1) provides:

[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.

On November 3, 2009, Whitesburg notified the Commission of its intent to increase its wholesale water rate for service provided to Letcher District from \$2.90 per 1,000 gallons to \$3.53 per 1,000 gallons. It proposed an effective date of December 3, 2009.

⁷ *Id.* at 2.

On November 25, 2009, Letcher District filed an objection to Whitesburg's proposed rates. Based upon the foregoing and being otherwise sufficiently advised, the Commission finds it appropriate to open this proceeding to investigate the reasonableness of Whitesburg's proposed wholesale water service rate to Letcher District.

IT IS HEREBY ORDERED that:

1. Whitesburg's proposed wholesale water service rate to Letcher District is suspended for five months from December 3, 2009 up to and including May 3, 2010.
2. Letcher District is made a party to this proceeding.
3. Whitesburg shall, no later than December 23, 2009, file with the Commission the original and six copies of the information listed in the Appendix to this Order, with a copy to all parties of record.
 - a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided.
 - b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

4. At any hearing in this matter, neither opening statements nor summarization of direct testimony shall be permitted.

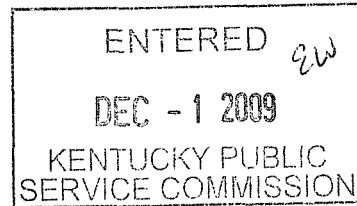
5. Motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

6. All documents that this Order requires to be filed with the Commission shall be served upon all other parties.

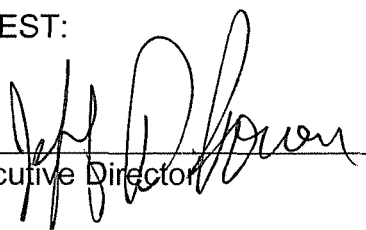
7. Prior to filing any materials with the Commission, all parties should carefully review documents to ensure that any personal identifiers of a sensitive nature, such as social security numbers, tax identification numbers, insurance policy identification numbers, and bank account numbers, are redacted, unless the documents are to be filed confidentially under 807 KAR 5:001, Section 7.

8. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2009-00465 DATED **DEC - 1 2009**

1. Provide a copy of all current agreements and contracts between Whitesburg and Letcher District.
2. Provide the independent auditor's reports for Whitesburg's water and sewer operations for the fiscal years ending June 30, 2007, June 30, 2008, and June 30, 2009.
3.
 - a. State the test period upon which Whitesburg bases its proposed rate adjustment.
 - b. Explain why this test period was chosen.
4. Provide the general ledgers for Whitesburg's water and sewer operations for the proposed test period and the most recently concluded fiscal year. These general ledgers shall include all check registers and spreadsheets used to record and track financial transactions.
5. For each outstanding revenue bond issuance related to Whitesburg's water and sewer operations:
 - a. Provide the bond ordinance or resolution authorizing the issuance of revenue bonds.
 - b. Provide an amortization schedule.
 - c. Provide a detailed explanation of why the debt was incurred.
6. List all persons on Whitesburg's payroll during the proposed test period. For each employee, state his or her job duties, total wages paid during the fiscal year,

current salary or wage rate, and the percentage of work hours spent performing duties for each city division (e.g., water, sewer, police department, public works) during the fiscal year. If Whitesburg's records do not permit the allocation of an employee's work hours among city divisions, provide an estimate for each employee and explain how Whitesburg derived the estimate.

7. For each employee listed in Item 6, describe how Whitesburg allocated his or her payroll and payroll overhead charges to each city division for the proposed test period. This response shall include a detailed explanation of all allocation procedures. Payroll overhead charges include payroll taxes, health insurance premiums, pension costs, and any other employee benefit costs.

8. a. List all joint or shared costs that Whitesburg incurred during the proposed test period. For each cost, list the vendor, total expense amount, amounts allocated per division, and the basis for the allocation.

b. Describe the procedures to allocate joint and shared costs among Whitesburg's divisions for the proposed test period.

c. Provide all internal memoranda, policy statements, correspondence, and documents related to the allocation of joint and shared costs.

9. Provide detailed depreciation schedules for the water and sewer divisions. A separate schedule shall be provided for each division.

10. Provide an adjusted trial balance and audit adjustments for the proposed test period and the most recently completed fiscal year. The trial balance shall be traced and referenced directly to the general ledgers requested in Item 4.

11. Provide the "Enterprise Funds Uniform Financial Information Report" that Whitesburg submitted to the Kentucky Department of Local Government for the fiscal years ending June 30, 2004, June 30, 2005, June 30, 2006, June 30, 2007, June 30, 2008 and June 30, 2009.

12. a. Complete the table below:

| Water Main Size* | Total Miles Of Line | Miles Of Lines Jointly Used By Both Whitesburg and Its Wholesale Customers |
|------------------|---------------------|--|
| 24" | | |
| 22" | | |
| 20" | | |
| 18" | | |
| 16" | | |
| 14" | | |
| 12" | | |
| 10" | | |
| 8" | | |
| 6" | | |
| 4" | | |
| 2" | | |

*If Whitesburg has mains larger than listed, provide the information requested on a separate sheet referencing this question.

b. Who paid for the water main(s) that Whitesburg uses to deliver water to Whitesburg's wholesale customers?

c. Besides Letcher District, what other customers, if any, does Whitesburg serve from the water mains that it uses to deliver water to these customers?

d. For each customer listed in response to Item 12(c), provide its monthly water usage for each of the previous 24 months.

13. a. What is the maximum capacity of Whitesburg's water treatment plant?

b. (1) How much of Whitesburg's total water treatment plant capacity is currently reserved for each wholesale customer? Provide the name of the wholesale customer and the plant capacity reserved for that customer.

(2) What changes, if any, does Whitesburg expect within the next three years in the level of water treatment capacity reserved for each of the customers listed in Item 13(b)(1)? Why does Whitesburg expect these changes?

14. a. Who owns the master meter(s) through which Whitesburg provides water to the customers listed in Item 13(b)(1)?

b. Through how many master meters does Whitesburg provide water service to each of the customers listed in Item 13(b)(1)?

c. Who is responsible for maintaining these master meters?

15. Provide a system map showing all Whitesburg facilities that are used to serve the customers listed in Item 13(b)(1).

16. What portion, if any, of Whitesburg's water main(s) that serve the customers listed in Item 13(b)(1) are gravity-fed?

17. For each month of the previous 36 months, state Whitesburg's water sales (in gallons) to its retail customers and each of its wholesale customers.

18. Complete the table below:

| City of Whitesburg** | Gallons for Test Period | Gallons for Fiscal Year Ending June 30, 2009 |
|-------------------------------------|-------------------------|--|
| Plant Use | | |
| Line Loss (Unaccounted for) | | |
| Sales to Retail | | |
| Sales to Letcher District | | |
| Sales to other wholesale customer 1 | | |
| Sales to other wholesale customer 2 | | |
| Total Produced and Purchased | | |
| Total Sold | | |

**If Whitesburg has other wholesale customers than listed, provide the information requested on a separate sheet referencing this question.

19. What types of water service (e.g., service to municipal buildings, fire protection, etc.) are included in the unmetered amount? For each type of service, estimate the percentage of the total unmetered amount.

20. Provide any cost-of-service study prepared on Whitesburg's proposed rate for wholesale water service.

21. a. Who prepared this cost-of-service study?
- b. Provide the preparer's curriculum vitae.
- c. List all cases before the Commission in which the preparer has submitted a cost-of-service study.
- d. List all utilities (municipal or public) for which the preparer has prepared a cost-of-service study. For each utility, identify the type of utility service (water or sewer) for which the report was prepared.

22. Provide a copy of the cost-of-service study upon which the proposed rates are based.

23. Provide a copy of the city's resolution authorizing Whitesburg to charge the wholesale rate to Letcher District.

24. Refer to Section C(5) of the contract between Whitesburg and Letcher District dated November 1, 2004. Explain how Whitesburg is complying with this contractual provision that allows adjustments in rates every two years if the contract was effective starting in an even-numbered year and this is currently an odd-numbered year.

Honorable James Asher
President
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Phillip Back
Chairman
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